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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

RICHARD L. MATHIAS, *et al.*,
Petitioners,

v.

WORLDCOM TECHNOLOGIES, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF OF THE COUNCIL OF STATE GOVERNMENTS, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL GOVERNORS ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, AND U.S. CONFERENCE OF MAYORS AS *AMICI CURIAE* SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

Amici will address the following questions:

Whether a state commission's acceptance of Congress' invitation to participate in implementing sections 251 and 252 of the Telecommunications Act of 1996 constitutes a waiver of Eleventh Amendment immunity.

Whether an official capacity action seeking prospective relief against state public utility commissioners for errors allegedly made in interpreting pre-existing interconnection agreements under the Telecommunications Act of 1996 can be maintained under the *Ex parte Young* doctrine.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county and municipal governments and officials throughout the United States. *Amici* have a compelling interest in opposing federal judicial encroachment on the States' sovereign prerogative to structure their administrative and judicial processes.[1]

The Eleventh Amendment is one of the principal constitutional protections of state sovereignty. The Amendment recognizes that "each State is a sovereign entity in our federal system" and that "[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996) (quotations and citations omitted). As the Court recently reaffirmed, "Congress may not, of course, base its abrogation of the States' Eleventh Amendment immunity upon the powers enumerated in Article I." *Board of Trustees of the Univ. of Ala. v. Garrett*, 121 S.Ct. 955, 962 (2001).

The court of appeals reasoned that when a state commission exercises regulatory authority to interpret a telephone interconnection agreement under sections 251 and 252 of the 1996 Telecommunications Act, Congress has provided it with a "gratuity." *MCI Telecom. Corp. v. Illinois Bell Telephone Co.*, 222 F.3d 324, 342 (7th Cir. 2000). The court therefore held that Illinois had constructively waived its Eleventh Amendment immunity from suit in federal district court. This holding ignores the clear instruction of *College Savings Bank v. Florida Prepaid Postsecondary Ed. Exp. Bd.*,

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[1] The parties have consented to the filing of this *amicus* brief and their letters of consent filed with the Clerk of the Court. This brief was not authored in whole or in party by counsel for a party, and no person or entity, other than *amici* or their members, made a monetary contribution towards its preparation or submission.

527 U. S. 666 (1999), that "the constructive-waiver experiment . . . was ill conceived" and there is "no merit in attempting to salvage any remnant of it." *Id.* at 680 (citing *Parden v. Terminal Ry. of Ala. Docks Dept.*, 377 U.S. 184 (1964)).

The court of appeals further held that *Ex parte Young*, 209 U.S. 123 (1908), provides an independent basis for the federal district court to exercise jurisdiction over the Commissioners' order in this case, notwithstanding that it was adjudicatory in nature. This holding erroneously expands the scope of the *Young* doctrine to sanction federal court review of a state agency's judicial act. Unless reversed, it will result in federal district courts displacing state appellate Courts as reviewers of state administrative adjudications.

Affirmance of these holdings would result in a highly disruptive expansion of federal court jurisdiction over state proceedings and interfere with the States' sovereign prerogative to structure the relationship between their administrative agencies and their courts. Because of the importance of these issues to *amici* and their members, this brief is submitted to assist the Court in its resolution of the case.

SUMMARY OF ARGUMENT

1. Illinois has not expressly consented to suit in federal court and section 252 does not unequivocally express Congress' intent that a State that regulates interconnection agreements subjects itself to suit in federal court. Section 252 merely establishes "[p]rocedures for negotiation, arbitration, and approval of [interconnection] agreements." 47 U.S.C. § 252. It does not address the enforcement of, or resolution of disputes arising under, previously negotiated and approved agreements. The court of appeals thus erred in holding that Illinois had clear notice that interpreting a pre-existing interconnection agreement would subject the State to suit in federal court.

The most pertinent statutory language states only that "[i]n any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section." *Id.* § 252(e)(6). By its plain terms, this provision limits federal court review to state commission actions resolving disputes over the terms of agreements through arbitration, approval and rejection of agreements. And even with respect to these determinations, the statute does not say that the States themselves are suable in federal court. In short, section 252 lacks the clear statement necessary so that a State contemplating regulation can make its choice fully cognizant that its participation will subject it to suit in federal district court.

2. The court of appeals erred in holding that Congress has power under Article I to "extract" a constructive waiver of the State's Eleventh Amendment immunity as a condition of allowing it to regulate. *See* 222 F.3d at 342 (citing *College Savings Bank v. Florida Prepaid Postsecondary Ed. Exp. Bd.*, 527 U.S. 666, 686 (1999)). Contrary to the view of the court below, *College Savings* does not establish that Congress can extract a constructive waiver as long as it is providing the States with a gift or gratuity. No decision of this Court has ever held that Congress can condition a grant of federal funds on a State's waiver of its Eleventh Amendment immunity. Rather, the cases have merely assumed the existence of such a power and been decided on statutory grounds. To allow such waivers would violate the principle that " '[t]he Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction.'" *Board of Trustees of the Univ. of Ala. v. Garrett*, 121 S.Ct. 955, 962 (2001) (citation omitted).

In any event, the court's characterization of a congressional grant of regulatory power as a gift or gratuity is erroneous. If there is any party who is receiving a gift or gratuity when a State agrees to regulate in accordance with federal instructions, it is Congress and the FCC which are spared the substantial costs of setting up a local field office of the federal bureaucracy. Furthermore, the States have regulated local phone service since early in the last century. *See AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 402-03 (1999) (Thomas, J., concurring in part and dissenting in part). Such regulation protects the interests of millions of telephone users and has created enormous constituencies of consumers and interest groups. States cannot realistically abandon regulation when Congress does not preempt all aspects of regulation but leaves substantial areas to the States.

3. The court of appeals erred in holding that *Ex parte Young*, 209 U.S. 123 (1908), provides a basis for Ameritech to challenge the ICC's order in federal district court. While the *Young* doctrine allows a party to bring a federal court suit challenging state legislative and executive action, the doctrine does not allow a challenge to a state judicial act.

Young makes clear that "an injunction against a state court would be a violation of the whole scheme of our government," 209 U.S. at 163, and this Court has subsequently recognized that the States can transfer judicial power to an administrative agency. *Printz v. United States*, 521 U.S. 898, 929 n.14 (1997). It is also well established that an administrative agency engaged in adjudication is performing a judicial act.

The ICC proceeding which Ameritech challenged here was, in every sense, an exercise of judicial power. It commenced when Ameritech's competitors filed complaints with the ICC, and included a prehearing conference, a status hearing, and a full evidentiary hearing with both direct and rebuttal testimony. *See* J.A. 98a-99a. The proceeding

culminated with the ICC's adjudication of the rights of the parties under a pre-existing interconnection agreement. Because the ICC acted as a court in this case, the *Young* doctrine does not permit Ameritech to bring a federal court suit against a state commission challenging its order.

Furthermore, the theory of *Young* that a state officer is stripped of the State's sovereign immunity when violating federal law because he has committed a tortious act is inapplicable in this case. Under the common law, judicial officers are not liable in a civil action for any judicial act committed within their jurisdiction. *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872). This rule applies to persons who exercise judicial functions within an administrative agency. *Butz v. Economou*, 438 U.S. 478, 514 (1978). Errors committed in the judicial process are corrected on appeal—not by civil actions against judicial officers. Because the common law does not recognize a judicial officer's erroneous interpretation of law to be grounds for a lawsuit, Ameritech's suit against the Commissioners for injunctive relief is barred by the Eleventh Amendment.

ARGUMENT

THE LOWER FEDERAL COURTS LACK JURISDICTION TO REVIEW THE ILLINOIS COMMERCE COMMISSION'S ORDER

The Illinois Commerce Commission (ICC), a state administrative agency with longstanding expertise in the regulation of local telephone service, exercised judicial power granted it under Illinois law when it adjudicated complaints filed against Ameritech, the incumbent local exchange carrier, by several of its competitors concerning the interpretation of their interconnection agreements. Illinois law provides for appeal of the ICC's order in the Illinois Appellate Court, *see* 220 ILCS § 5/10-201(a), and Ameritech filed such an appeal.

Ameritech also challenged the ICC's order by filing suit in federal district court, J.A. 125a, even though a federal district court "does not sit to review on appeal action taken administratively or judicially in a state proceeding." *Chicago, R.I. & P. R.R. Co. v. Stude*, 346 U.S. 574, 581 (1954).[2] The Seventh Circuit nonetheless rejected the Commissioners' Eleventh Amendment defenses and held that both the State and the Commissioners were subject to suit in federal district court. *See* Pet. App. 12a-13a (citing *MCI Telecommunications Corp. v. Illinois Commerce Commission*, 168 F.3d 315 (7th Cir. 1999)).

The court of appeals' holding that Illinois waived its Eleventh Amendment immunity because the acceptance of regulatory responsibility is the equivalent of a "gratuity" is erroneous. Its predicate conclusion that section 252 manifests in clear terms that a State is required to waive its immunity from suit in federal court as a condition of exercising regulatory authority under sections 251 and 252 is irreconcilable with the statutory language. The court's further holding that *Ex parte Young* provides an independent basis for federal court jurisdiction marks an unprecedented and unwarranted expansion of the doctrine and threatens vital principles of federalism. This Court should therefore reverse the judgment of the court of appeals.[3]

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[2] *See also Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 354-55 (1961); *but see City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997). *Amici* discuss the inapplicability of *ICS* at p.27, n. 13, *infra*.

[3] *Amici* agree with petitioners' argument that the Commissioners' interpretation of a previously approved interconnection agreement is not a determination subject to federal court jurisdiction under section 252. *See* Pet. Br. Section I.

I. THE ELEVENTH AMENDMENT BARS THE LOWER FEDERAL COURTS FROM REVIEWING THE ICC'S ORDER

This Court has long recognized that " 'although the text of the [Eleventh] Amendment would appear to restrict only the Article III diversity jurisdiction of the federal courts, "we have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition . . . which it confirms." ' " *Florida Prepaid Postsecondary Ed. Exp. Bd. v. College Savings Bank*, 527 U.S. 627, 634 (1999) (quoting *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) (quoting *Hans v. Louisiana*, 134 U.S. 1, 15 (1890))). In *Florida Prepaid* the Court reiterated that this presupposition "has two parts: first, that each State is a sovereign entity in our federal system; and second, that ' "[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." ' " *Id.* at 634 (citations omitted). Thus, " '[f]or over a century, [the Court has] reaffirmed that federal jurisdiction over suits against unconsenting States "was not contemplated by the Constitution when establishing the judicial power of the United States." ' " *Id.* (citations omitted). It has also "long been settled" that the Eleventh Amendment immunity applies "not only [to] actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities." *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997) (citations omitted).

In *Seminole Tribe*, the Court held "that Congress may not abrogate state sovereign immunity pursuant to its Article I powers" such as the Commerce Clause. *Florida Prepaid*, 527 U.S. at 636; *see also Seminole Tribe*, 517 U.S. at 72-73. The Court has also made clear that "constructive waiver" and "abrogation" are functional equivalents. *College Savings Bank v. Florida Prepaid Postsecondary Ed. Exp. Bd.*, 527 U.S. 666, 683 (1999) ("Forced waiver and abrogation . . . are

the same side of the same coin."). Thus, where Congress acts pursuant to its Article I powers, a State can be sued in federal court only if it has expressly and affirmatively consented to suit in federal court. *See id.*

The test for consent " 'is a stringent one.' " *Id.* at 675 (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985)). As consent to suit requires a "voluntary" act on the part of the sovereign, a State must either "voluntarily invoke[]" the jurisdiction of the federal courts, or "make[] a 'clear declaration' that it intends to submit itself to" the jurisdiction of the lower federal courts. *Id.* at 675-76 (quoting *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 54 (1944)). And because waiver of Eleventh Amendment immunity involves the relinquishment of a constitutional privilege, "the Court will find waiver . . . 'only where stated "by the most express language or by such overwhelming implications from the text as [will] leave no room for any other reasonable construction." ' " *Welch v. Texas Dept. of Highways and Pub. Transp.*, 483 U.S. 468, 473 (1987) (quoting *Edelman v. Jordan*, 415 U.S. 651, 673 (1974) (other citation omitted)).[4]

In this case, Illinois has neither "expressly consented to being sued in federal court," nor "affirmatively invoked" the jurisdiction of the lower federal courts. *College Savings*, 527 U.S. at 676. Instead, the court of appeals premised its finding of "constructive waiver" on the notion that Illinois did so by agreeing to participate in the federal regulatory program

[4] The Court has thus held that "a State does not consent to suit in federal court merely by consenting to suit in the courts of its own creation," *College Savings*, 527 U.S. at 676 (citing *Smith v. Reeves*, 178 U.S. 436, 441-45 (1900)), "by stating its intention to 'sue and be sued,' " *id.* (quoting *Florida Dept. of Health and Rehab. Servs. v. Florida Nursing Home Ass'n*, 450 U.S. 147, 149-50 (1981) (*per curiam*)), or "by authorizing suits against it " 'in any court of competent jurisdiction.' " *Id.* (quoting *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573, 577-79 (1946)).

enacted by Congress in sections 251 and 252 of the 1996 Telecommunications Act. *See, e.g., MCI Telecom. Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 341-44 (7th Cir. 2000); *MCI Telecom. Corp. v. ICC*, 183 F.3d 558, 566-67 (7th Cir. 1999) (on rehearing).

While the Court once indicated that a State could be deemed to have waived its Eleventh Amendment immunity by participating in a commercial activity subject to federal regulation, *see Parden v. Terminal Ry. of Ala. Docks Dept.*, 377 U.S. 184, 192 (1964), the Court has "never applied the holding of *Parden* to another statute." *College Savings*, 527 U.S. at 680. *See also Welch*, 483 U.S. at 478 n.8; *Employees of Dept. of Pub. Health and Welfare v. Department of Pub. Health and* Welfare, 411 U.S. 279 (1973). In *College Savings*, the Court recognized that *Parden* was premised on the erroneous "notion that state sovereign immunity is not constitutionally grounded" and that to "recogniz[e] a congressional power to extract constructive waivers of sovereign immunity through the exercise of Article I powers would also, as a practical matter, permit Congress to circumvent the antiabrogation holding of *Seminole Tribe*." 527 U.S. at 682-83.

In *College Savings*, the Court also responded to the United States' assertion that this Court has in "two other contexts" permitted "Congress, in the exercise of its Article I powers, to extract 'constructive waivers' of state sovereign immunity." *Id.* at 686-87 (discussing *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275 (1959) (compact clause); *South Dakota v. Dole*, 483 U.S. 203 (1987) (spending clause)).[5]

[5] *Amici* strenuously disagree with the court of appeals' conclusion that "*Petty*- and *Dole*-style waivers [were] endorsed by the . . . Court in *College Savings*." *See* 222 F.3d at 342. The Court was merely responding to assertions of the United States, and did not "endorse" anything. *See* 527 U.S. at 686-87. *Dole*, of course, was not even an Eleventh Amendment case. *See* 483 U.S. at 205.

The Court, however, declined to follow these cases, explaining that these exercises of congressional power were "fundamentally different" from the case before it which involved Congress' conditioning of the State's right to participate in otherwise lawful activity on the relinquishment of their Eleventh Amendment immunity. *See* 527 U.S. at 686-87. It reasoned that *Petty* and *Dole* involved the granting of a gratuity and not the imposition of a sanction. For example, under the Compact Clause, "States *cannot* form an interstate compact without first obtaining the express consent of Congress." *Id.* at 686. Likewise, "Congress has no obligation to use its Spending Clause power to disburse funds to the States; such funds are gifts." *Id.* at 686-87.

2. The court of appeals' analysis properly began with the threshold question of whether Congress had "unequivocally" expressed its intent that waiver of Eleventh Amendment immunity was a condition of the States' participation as " 'deputized' federal regulator[s]." *See MCI v. Illinois Bell*, 222 F.3d at 340-342, 344. The court acknowledged that this Court "has required 'an unequivocal expression of congressional intent' to obtain an Eleventh Amendment waiver from states," *id.* at 341 (quoting *Atascadero*, 473 U.S. at 238-40); that "Congress must state the condition 'unambiguously,' " *id.* (quoting *Dole*, 483 U.S. at 207, and *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (*Pennhurst I*); and that "Congress must 'speak with a clear voice' so that the states may exercise their choice to waive their immunity 'knowingly, cognizant of the consequences of their participation.'" *Id.* at 340 (quoting *Pennhurst I*, 451 U.S. at 17). The court of appeals then disregarded these principles and invoked "the structure of the pertinent section of the statute" to conclude that it is "clear that Congress intended to provide for federal court review of any regulatory determination made under" Section 252. 222 F.3d at 341.

The court of appeals acknowledged that section 252 "does not contain [an] express waiver" of the States' Eleventh

Amendment immunity. *Id.* Indeed, section 252 merely establishes "[p]rocedures for negotiation, arbitration, and approval of [interconnection] agreements." 47 U.S.C. § 252. In short, section 252's purpose is to get the parties—the incumbent local exchange carrier (ILEC) and competing local exchange carriers (CLECs)—to an agreement. The statute simply does not address the enforcement of, or resolution of disputes arising under, previously negotiated and approved agreements, as is the case here.

Moreover, the most pertinent statutory language states only that "[i]n any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section." *Id.* § 252(e)(6). By its plain terms, this provision limits federal court review to those instances "in which a State commission makes a determination under this section," thus contemplating *at most* review of State commission actions in resolving disputes over the terms of agreements through arbitration, approval and rejection of agreements.[6] *Id.* This conclusion is buttressed by subsection 252(e)(4), which provides that "[n]o State court shall have jurisdiction to review the action of a State commission in *approving or rejecting an agreement under this section.*" *Id.* § 252(e)(4) (emphasis added).

Furthermore, even when a state commission has made a determination under section 252, the statute does not say that the States themselves are suable in federal court. *See id.* Subsection 252(e)(6) provides only that the aggrieved party

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[6] Indeed, Congress did not define what constitutes a "a determination under" section 252. Congress used the term "determination" and its root "determine" only in the provisions related to "[p]ricing standards," *see* 47 U.S.C. § 252(d), thus suggesting an even narrower scope of federal court review.

"may bring an action . . . to determine whether the agreement or statement meets the requirements of" sections 251 and 252. It does not state that a party can bring an action to determine whether the state commission violated federal law in approving or rejecting an agreement. As there are two parties to every interconnection agreement—the CLEC and ILEC, who have strong economic interests in obtaining the most advantageous terms possible under federal law—there is no need to subject a state commission to the coercive process of a federal district court suit, with all the disruption of the federal-state balance that results.[7] In short, section 252 lacks the clear statement necessary so that a State contemplating service as a deputized federal regulator can choose to regulate (or not), fully cognizant that Congress intended that its interpretation of pre-existing interconnections agreements would subject it to suit in federal district court.

While acknowledging the lack of "express waiver language," the court of appeals asserted that the structure of section 252 "nevertheless makes clear that Congress intended to provide for federal court review of any regulatory determination made under this section." 222 F.3d at 341. According to the court, "if a state commission does not carry out its responsibilities under § 252, the FCC will act in place of the state commission," and "the exclusive remedy for a state commission's failure to act will be the proceedings before the FCC and any judicial review of the FCC's actions." *Id.* (citing 47 U.S.C. § 252(e)(5) & (6)). The court thus reasoned that:

> under the terms of § 252, the state commission or, if that body chooses not to act, the FCC will exercise regulatory authority over interconnection agreements. That administrative action, whether taken by a state administrative tribunal or by the FCC, is subject to review in federal court. If the reviewing body is a state commission, the statute provides that the commission's actions are reviewable in federal court under subsection 252(e)(6); if the reviewing body is the FCC, its actions are reviewable in federal court under 28 U.S.C. § 2342(1).

[7] A state commission can, of course, voluntarily intervene in federal court or participate as an *amicus curiae*.

Id. Evidently, the court concluded that because any action taken by the FCC under section 252 is reviewable in the federal courts, Congress sought a form of procedural and remedial equivalence by subjecting state commissions to suit in the federal district courts.

Jurisdiction to review the FCC's orders, however, lies in the United States courts of appeals. *See* 28 U.S.C. § 2342(1); 47 U.S.C. § 402. Such a proceeding takes the form of a "petition to review," 28 U.S.C. § 2344, and is "heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency." *Id.* § 2347(a). It is an appeal and not a "civil action[]," which is subject to the original jurisdiction of the federal district courts. *See* 28 U.S.C. § 1331.

It is thus a non-sequitur to reason that because Congress subjected FCC actions under subsection 252(e)(5) to limited appellate review, the state commissions have clear and unequivocal notice that they can be hauled into federal district court. The FCC is Congress's creation. Congress can subject FCC orders to whatever system of judicial review it chooses, and it chose appellate review. Yet if the Seventh Circuit's construction is correct, Congress intended to subject the state commissions to the far more intrusive process of district court litigation, notwithstanding that the commissions are sovereign entities whose immunity from suit is a constitutional privilege. This, according to the court below, is the price Congress imposed on the States for assisting in the implementation of a federal regulatory program by adjudicating what is in essence a commercial dispute.

Affirmance of this result would, of course, fundamentally alter the federal-state balance. The structure of the Act thus provides no basis for departing from the settled rule that Congress must provide an unequivocal textual statement that the States waive their immunity from suit in federal court as a condition of helping Congress implement federal policy. *See Atascadero*, 473 U.S. at 239–40; *Pennhurst I*, 451 U.S. at 17.

3. Even if section 252 provides clear notice to the States that their participation in the regulatory scheme subjects them to waiver of Eleventh Amendment immunity, the court of appeals erred in holding that Congress has power to extract such a waiver when regulating pursuant to the commerce clause. In the court of appeals' view, because Congress has power under the commerce clause entirely to preempt state regulation of local phone service, its decision to give States the choice to regulate aspects of local phone service is a "gift or gratuity" to which Congress can attach the condition that the State waive its immunity. 222 F.3d at 344 (citing *College Savings*, 527 U.S. at 686-87). The court of appeals' holding erroneously resuscitates congressional power under Article I to "extract" constructive waivers in a manner contrary to *College Savings*. *See* 527 U.S. at 680, 686. It erroneously characterizes the Court's discussion, which rejected the United States' attempt to save the constructive waiver doctrine, into a holding. *See id.* at 686-87. Finally, it demonstrates a serious misunderstanding of the federal-state relationship and eviscerates the landmark holding of *Seminole Tribe*.

In *College Savings*, the Court addressed and rejected the United States' attempt to revive the doctrine based on its argument that there were "two other contexts in which . . . [the Court has] permitted Congress, in the exercise of its Article I powers, to extract 'constructive waivers' of state sovereign immunity." 527 U.S. at 686. The United States there argued that Congress has power to extract waiver where States seek Congressional approval of an interstate compact,

and where Congress conditions a State's receipt of federal funds on waiver of the immunity. *See id.* (discussing *Petty*, 359 U.S. 275, and *South Dakota v. Dole*, 483 U.S. 203). The Court dismissed the United States' argument as inapposite, distinguishing these exercises of congressional power on the ground that they did not impose a sanction but rather bestowed a "gift or gratuity," which Congress does not have to make and a State does not have to accept. *Id.* at 687. Even then the Court explained that where Congress imposes a condition on the grant of federal funds, " 'the financial inducement . . . might be so coercive as to pass the point at which "pressure turns into compulsion." ' " *Id.* (quoting *Dole*, 483 U.S. at 211 (quoting *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 (1937))).

Contrary to the view of the court of appeals, *see* 222 F.3d at 342, this discussion does not "endorse" the view that Congress has power under Article I to extract a waiver of Eleventh Amendment immunity as long as it provides the States with a "gift." Indeed, no decision of this Court has ever squarely held that Congress can condition a grant of federal funds on a State's waiver of its Eleventh Amendment immunity. *Dole*, for example, did not involve a condition that States waive their Eleventh Amendment immunity. *See* 483 U.S. at 205. *Dole* even recognized "that other constitutional provisions may provide an independent bar to the conditional grant of federal funds." *Id.* at 208.

In *Atascadero*, the Court merely held that the Rehabilitation Act "falls short of manifesting a clear intent to condition participation in the programs funded under the Act on a State's consent to waive its constitutional immunity." 473 U.S. at 247. Similarly, both *Florida Dept. of Health* and *Edelman* were decided on the ground that the relevant federal law lacked the clear statement required to put the States on notice that Congress was extracting a waiver of their Eleventh Amendment immunity as a condition for participation in the

program. *See Florida Dept. of Health*, 450 U.S. at 149-50; *Edelman*, 415 U.S. at 673-74.

Thus, none of these cases establishes the proposition that Congress can, in the exercise of its Article I powers, extract a waiver as long as it is providing the States with a "gratuity." Such a rule would violate the fundamental principle that " '[t]he Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction.' " *Board of Trustees of the Univ. of Ala. v. Garrett*, 121 S.Ct. 955, 962 (2001) (quoting *Seminole Tribe*, 517 U.S. at 72-73).[8]

Moreover, *College Savings* did not suggest that a grant of regulatory power enacted pursuant to the commerce power which must be carried out in accordance with federal instructions, is a gift or gratuity. *See* 527 U.S. at 686-87. Indeed, such a characterization is fundamentally flawed. Congress did not offer the States any financial recompense for undertaking to administer sections 251 and 252. If there is any party that has received a gift or gratuity when a State accepts regulatory authority under the Telecommunications Act, it is Congress and the FCC, which are spared the substantial costs of setting up a local field office of the federal bureaucracy.[9]

As Congress did not provide federal funds in exchange for the States agreeing to regulate, the court of appeals was forced to construct an alternative hypothesis. Because Congress could preempt state regulation of local telephone

[8] If the United States is not satisfied with a State's performance of its obligations under a spending clause enactment, it can, off course, sue the State. Such a suit is not barred by the Eleventh Amendment. *See United States v. Mississippi*, 380 U.S. 128, 140-41 (1965).

[9] As the Fourth Circuit observed in response to the same argument, " 'Some gift.' " *Bell Atlantic Maryland, Inc. v. MCI Worldcom, Inc.*, 240 F.3d 279, 293 n.3 (4th Cir. 2001) (quoting opinion of district court).

service, the court reasoned that "[s]uch regulation is no longer an 'otherwise permissible activity' for states." 222 F.3d at 344. Therefore, "Congress may choose to 'give back' to states some of the regulatory power Congress has taken away, and Congress may attach conditions to the return of that power." *Id.*

This theory rests on a fundamental misunderstanding of the commerce power. As the Court has explained, the Constitution authorizes Congress to "exercise its legislative authority directly over individuals rather than over States." *New York v. United States*, *Id.* 144, 165 (1992). "The allocation of power contained in the Commerce Clause . . . authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce." *Id.* at 166. Thus, while "Congress has the authority . . . to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *Id.* Subjecting States to suits based on their assertedly erroneous administration of federal standards is simply an impermissible attempt to "regulate state governments' regulation of interstate commerce." *Id.*

Indeed, even those who argued in *College Savings* for the retention of some form of *Parden* waivers implicitly recognized the invalidity of such waivers when the State is engaged in regulation. *See* 527 U.S. at 679-80 (summarizing argument of petitioners and United States that "a State is never deemed to have constructively waived its sovereign immunity by engaging in activities that it cannot realistically choose to abandon, such as the operation of a police force; but constructive waiver is appropriate where a State runs an enterprise for profit, operates in a field traditionally occupied by private persons or corporations, engages in activities sufficiently removed from 'core state functions,' or otherwise acts as a 'market participant' in interstate commerce") (other citation omitted).

The Court rejected this argument observing that a "State's mere presence in a field subject to Congressional regulation" does not demonstrate that it has voluntarily waived its immunity. *Id.* at 680. Indeed, the potential for involuntary waiver is even greater where, as here, the activity which purportedly subjects a State to suit is its activity as a regulator in a field historically subject to state authority.

The States have long exercised their police powers to regulate commercial activity generally and telecommunications specifically. "By 1915, most States had established public utility commissions and charged them with regulating telephone service." *AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. at 403 (Thomas, J., joined by Rehnquist, C.J., & Breyer, J., concurring in part and dissenting in part) (citing J. Brooks, *Telephone: The First Hundred Years* 144 (1976)). When Congress entered the field by enacting the Mann-Elkins Act (Act of Jun. 18, 1910, ch. 309, § 7, 36 Stat. 544-45), it did not preempt the States' regulation of intrastate phone service. *See AT & T Corp.*, 525 U.S. at 403 (Thomas, J.). The jurisdictional separation between state and federal authority remained unaltered until the Telecommunications Act of 1996. *See id.* at 403-05 (Thomas, J.). During this period, the States created extensive schemes (comprised of both substantive rules and administrative bodies) to regulate the intrastate aspects of phone service. *See* 220 ILCS §§ 5/13-101-902. It was this "policy expertise" that Congress sought "to take advantage of." 525 U.S. at 412 (Thomas, J.).

Given the longstanding and extensive role played by the States in regulating local phone service, Congress knew full well that the state commissions could not respond to sections 251 and 252 by simply closing up shop. Indeed, because the 1996 Telecommunications Act does not preempt all aspects of the States' regulation of local phone service, but leaves substantial areas, such as the setting of retail rates, within their authority, States were highly unlikely to walk away. *Cf.*

FERC v. Mississippi, 456 U.S. 742, 766 (1982) ("[T]he choice put to the States—that of either abandoning regulation of the field altogether or considering the federal standards—may be a difficult one."). Indeed, it is absurd to suggest that the States can realistically abandon regulation which protects the interests of millions of telephone users.

Contrary to the view of the court of appeals, the state commissions have not "entered into the same kind of exchange with Congress that takes place when Congress offers federal funds conditioned on a state's acceptance of the federal terms." 222 F.3d at 343. The "exchange" is inherently coercive as the enormous constituency of phone users and interest groups protected by state commissions would object strenuously if a State proposed to cease regulation. The court of appeals therefore erred in holding that the Illinois Commerce Commission constructively waived the State's Eleventh Amendment immunity by interpreting a pre-existing interconnection agreement under sections 251 and 252.[10]

II. EX PARTE YOUNG DOES NOT PROVIDE A BASIS FOR FEDERAL COURT JURISDICTION TO REVIEW THE ICC'S ORDER

The court of appeals held that the Ex parte Young doctrine provides an "independent basis" for the carriers to "pursu[e] injunctive relief against the individual members of the state commissions" in federal court. 222 F.3d at 345. According

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[10] As explained *infra* at page 22, in *FERC v. Mississippi*, the Court held that a state agency that exercises adjudicatory powers is required to apply federal law if it has jurisdiction over similar state law disputes. *See* 456 U.S. at 760-61. Thus, in the absence of complete preemption, a state agency that adjudicates disputes under state law, as does the ICC, has no choice but to apply federal law. The State's decision to apply federal law is thus involuntary and cannot be deemed a waiver of the State's Eleventh Amendment immunity.

to the court of appeals, this is a "'straightforward Ex parte Young case[]'" because the commissioners' "determinations are still in place, and the carriers seek to have the commissioners conform their future actions, including their continuing enforcement of the challenged determinations, with federal law." *Id.* "Thus," the court explained, "the carriers' suits fit squarely within the traditional framework of Ex parte Young." *Id.*

The court's holding reflects a profound misunderstanding of the *Ex parte Young* doctrine. It marks an unprecedented expansion of the doctrine from the accepted realm of reviewing state legislative and executive action, to interposing the federal district courts as reviewing bodies of state judicial and quasi-judicial proceedings. *See* 17 Charles Alan Wright *et al.*, *Federal Practice & Procedure* § 4231, at 559-60 (1988) ("Ex parte Young established the power of the federal courts to enforce the Constitution against state *legislative* and *executive* action.") (emphasis added and footnote omitted).

The lower court's expansion of the doctrine is contradicted by the *Young* opinion itself, and, in any event, cannot be justified by its theory and purpose. It is also contrary to the principles of federal court non-interference with state judicial proceedings as reflected in the Anti-Injunction Act, 28 U.S.C. § 2283, and abstention doctrine. *See Younger v. Harris*, 401 U.S. 37, 43-44 (1971); *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 625-29 (1986) (abstention doctrine based on the "'vital consideration' of the proper respect for the fundamental role of the States in our federal system") (quoting *Younger*, 401 U.S. at 44).

The court of appeals acknowledged that "the present case arises in a slightly different context" than its *MCI* decision, Pet. App. 13a, which arose out of the arbitration and approval of an agreement. *See* 183 F.3d at 561. The court failed, however, to conduct any further examination into the nature

of the ICC proceeding, summarily concluding that all commission actions involving interconnection agreements are reviewable by suits that are "to be brought exclusively in the federal courts." Pet. App. 14a.

This case, however, is far removed from the paradigm of *Ex parte Young*. It is not a challenge to a legislative act. Nor is it a challenge to an executive branch official's authority to enforce a legislative act. *See Young*, 209 U.S. at 132. Rather, it is a challenge to an adjudication, which, while rendered by an administrative agency, nonetheless acted as a judicial body in the underlying proceeding. *Young* simply does not contemplate the exercise of federal court jurisdiction to review the ICC's order in this proceeding. As the Court explained in *Young*:

> [T]he right to enjoin an individual, even though a state official, from commencing suits under circumstances already stated, does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by a grand jury. The latter body is part of the machinery of a criminal court, and an injunction against a state court would be a violation of the whole scheme of our government. . . .
>
> The difference between the power to enjoin an individual from doing certain things, and the power to enjoin courts from proceeding in their own way to exercise jurisdiction, is plain, and no power to do the latter exists because of a power to do the former.

209 U.S. at 163.

The Court has, of course, long recognized that "[i]t is within the power of the States, as it is within the power of the Federal Government, to transfer some adjudicatory functions to administrative agencies, with opportunity for subsequent judicial review." *Printz v. United States*, 521 U.S. 898, 929 n.14 (1997) (citing *Crowell v. Benson*, 285 U.S. 22 (1932)). It is likewise well established that an administrative agency

engaged in adjudication is performing a judicial act. *See Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 224-26 (1908). Indeed, that is the very premise of *FERC v. Mississippi*, 456 U.S. 742, 760-61 (1982), which held that *Testa v. Katt*, 330 U.S. 386 (1947), requires a state administrative agency to apply federal law when it adjudicates disputes arising within its jurisdiction. *See* 456 U.S. at 760 ("the [State] Commission has administrative as well as judicial duties"); *see also Printz*, 521 U.S. at 929 n.14 ("We have no doubt that *FERC* would not have been decided the way it was if *non*adjudicative responsibilities of the state agency were at issue."); *FERC*, 456 U.S. at 775 n.1 (O'Connor, J., concurring in part and dissenting in part) (agreeing that *Testa* was controlling because "the Mississippi Public Service Commission has jurisdiction over similar state disputes, and it is settled that a State may not exercise its judicial power in a manner that discriminates between analogous federal and state causes of action").

The ICC proceeding which Ameritech challenged here was, in every sense, an exercise of judicial power. It was initiated when various CLECs filed complaints with the ICC against respondent Ameritech alleging that it had failed to pay them reciprocal compensation due for calls to internet service providers under their interconnection agreements. *See* J.A. 52a-95a; *see also id.* at 97a-98a. The cases were consolidated and assigned to a Hearing Examiner—the State's equivalent of an administrative law judge—who conducted a prehearing conference, a status hearing, and a full evidentiary hearing at which numerous witnesses testified. *See id.* at 99a. Other parties were allowed to intervene. *See id.* at 98a. The parties filed both initial and reply briefs, as well as draft orders, and were served with the Hearing Examiner's proposed order. *See id.* at 99a-100a. [11]

[11] The Illinois statute also allows the parties to file briefs in response to the hearing examiner's recommended order. *See* 220 ILCS § 5/10-111.

The ICC's order interpreted the agreements to require respondent Ameritech to pay reciprocal compensation, and ordered relief, which was both retroactive (by requiring the payment of past due compensation) and prospective in nature. *See id.* at 121a-124a. Not only was the form of the proceeding judicial in nature, the proceeding was in every sense an adjudication of the existing rights of the parties and thus a judicial act. *See Prentis*, 211 U.S. at 226 ("A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist."). [12]

To be sure, the Court has reserved the question of whether a state administrative body engaged in an adjudication is a court for purposes of the Anti-Injunction Act. *See Gibson v. Berryhill*, 411 U.S. 564, 573 n.12 (1973); *Prentis*, 211 U.S. at 226. Nonetheless, an examination of *Young*'s theoretical underpinnings demonstrates that it does not authorize a suit against state commissioners when they exercise judicial functions.

In *Young*, the Court rejected the assertion of a state attorney general that because he was acting under the authority of the State, he was cloaked with its Eleventh

[12] Appeal of the ICC's order lies in the State's appellate courts. *See* 220 ILCS § 5/10-201(a). Ameritech has filed such an appeal. *See* Pet. 7 n.1. Under Illinois law, "[n]o new or additional evidence may be introduced in any proceeding upon appeal from [an] . . . order or decision of the Commission, issued or confirmed after a hearing, but the appeal shall be heard on the record of the Commission as certified by it." *Id.* § 10-201(d). Review of the ICC's orders is deferential. Its factual findings are reviewed under the "substantial evidence" standard, *id.* § 5/10-201(e)(iv)(A), and the appellate court "will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with its administration and enforcement." *Moncada v. ICC*, 571 N.E.2d 1004, 1009 (Ill. App. Ct. 1991). The appellate court can reverse an ICC order if it "is in violation of the . . . . federal constitution or laws." *Id.* § 5/10-201(e)(iv).

Amendment immunity. 209 U.S. at 159. To this the Court responded:

> The act to be enforced is alleged to be unconstitutional; and if it be so, the use of the name of the state to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of, and one which does not affect, the state in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting, by the use of the name of the state, to enforce a legislative enactment which is void because unconstitutional.

Id. As the Court has subsequently explained, "[s]ince the State could not authorize the action, the officer was 'stripped of his official or representative character and [was] subjected in his person to the consequences of his individual conduct.' " *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984) (quoting *Ex parte Young*, 209 U.S. at 160).

Young thus rests on the common law fiction that "'the act complained of, considered apart from the official authority alleged as its justification, and as the personal act of the individual defendant, constituted a violation of right for which the plaintiff was entitled to a remedy at law or in equity against the wrongdoer in his individual character.' " *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 272 (1997) (opinion of Kennedy, J.) (quoting *In re Ayers*, 123 U.S. 443, 502 (1887)); *see also id.* at 288 (O'Connor, J., concurring) ("The *Young* doctrine recognizes that if a state official violates federal law, he is stripped of his official or representative character and may be personally liable for his conduct[.]"). Put another way, "where the individual would have been liable at common law for his actions, sovereign immunity was no bar regardless of the person's official position." *Id.* at 272 (Kennedy, J.).

The *Young* doctrine has a further applicable limit. "As the Court in *Larson* explained, an ultra vires claim rests on 'the officer's lack of delegated power. A claim of error in the

exercise of that power is therefore not sufficient.' " *Pennhurst II*, 465 U.S. at 101 n.11 (quoting *Larson v. Domestic & Foreign Comm. Corp.*, 337 U.S. 682, 690 (1949)). Thus, mere assertions of good faith error in the exercise of lawful authority, such as a tribunal's alleged mistake in the interpretation of an agreement, do not support an action under *Young*.

At the same time, the common law has long recognized "a general principle, applicable to all judicial officers, that they were not liable to a civil action for any judicial act done by them within their jurisdiction." *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872). *See also Pierson v. Ray*, 386 U.S. 547, 553-54 (1967). As the Court explained in *Pierson*, "[f]ew doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction." 386 U.S. at 553054.

For an act within a court's jurisdiction, a judge "cannot be subjected to responsibility for it in a civil action, however erroneous the [a]ct may have been, and however injurious in its consequences it may have proved to the plaintiff." *Bradley*, 80 U.S. (13 Wall.) at 347; *see also* W. Page Keeton *et al.*, *Prosser and Keeton on the Law of Torts* 1058 (5th ed. 1984) (Judicial immunity "covers all decisions within the general ambit of the judge's authority, even if the decision is clearly wrong on the merits."). Judicial "errors may be corrected on appeal," not by lawsuits against the judge. *Pierson*, 386 U.S. at 554. And because "adjudication within [an] administrative agency shares enough of the characteristics of the judicial process . . . those who participate in such adjudication [are] immune from suits for damages." *Butz v. Economou*, 438 U.S. 478, 512-13 (1978); *cf. id.* at 514 (persons "performing adjudicatory functions within a federal agency are entitled to absolute immunity from damages liability for their judicial acts. Those who

complain of error in such proceedings must seek agency or judicial review.").

Ameritech's suit for injunctive relief thus falls well outside the *Young* paradigm. As its federal court complaint states, "the State commission is empowered to enforce the agreements it approves." J.A. 131a (Complaint ¶15). Thus, even if the ICC is analogous to a court of limited jurisdiction, there can be no contention that the Commissioners have acted on a matter that is outside their jurisdiction. The Commissioners clearly possessed power to decide this dispute. Ameritech's suit is based on the Commissioners' asserted violations of federal law in interpreting the agreements. *See* J.A. 140a-144a. But under the common law, the Commissioners cannot be sued for any errors they committ in adjudicating a dispute. *See e.g., Bradley*, 80 U.S. (13 Wall.) at 351. And because "'[a] claim of error in the exercise of that power is . . . not sufficient'" to strip the Commissioners of their official character, Ameritech's suit for injunctive relief is barred by the Eleventh Amendment. *Pennhurst II*, 465 U.S. at 101 n.11 (quoting *Larson*, 337 U.S. at 690).

The need to vindicate the supremacy of federal law does not justify the court of appeals' unprecedented expansion of the *Young* doctrine to authorize the federal courts to review state proceedings which are "judicial in nature." *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 432-34 (1982). State courts are, of course, required to apply federal law, *see Testa*, 330 U.S. at 394, and are fully able to do so. *See Allen v. McCurry*, 449 U.S. 90, 105 (1980). Indeed, until 1875 Congress did not provide "any kind of general federal-question jurisdiction to the lower federal courts" and "'the state courts provided the only forum for vindicating many important federal claims.'" *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 588 (1995) (quoting *Palmore v. United States*, 411 U.S. 389, 401 (1973)).

The court of appeals' holding is simply an invitation to conflict and confusion. It manifests a shocking disrespect for the integrity of state judicial processes that is contrary to this Court's cases. A federal district court, the Court has observed, "does not sit to review on appeal action taken administratively or judicially in a state proceeding." *Chicago, R.I. & P. R.R. Co. v. Stude*, 346 U.S. 574, 581 (1954). Whatever may be the precise scope of the Court's holding in *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997), it does not apply here, where Illinois has vested judicial review of the ICC's order in the Illinois' appellate courts and not its trial courts. *See* 220 ILCS § 5/10-201(a).[13]

Moreover, even if the federal district court has jurisdiction over Ameritech's suit, exercising that jurisdiction disregards "the fundamental constitutional independence of the States and their courts." *Atlantic Coast Line R.R. Co. v. Brotherhood of Loc. Engs.*, 398 U.S. 281, 287 (1970). While in this case the Illinois Appellate Court stayed further proceedings pending resolution of Ameritech's federal suit, what if the court had declined to issue the stay? How then would the court of appeals' allocation of appellate authority work? *See* Pet. App. 4a-5a (court of appeals acknowledges that its "allocation of authority has the potential to cause problems").

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[13] This case does not involve an instance in which the State has vested judicial review of an administrative proceeding in a trial court of general jurisdiction. *See City of Chicago v. International College of Surgeons*, 522 U.S. 156, 159 (1997). Rather, judicial review lies in the Illinois' appellate courts, *see* p. 23 n.12, *supra*, and is thus an appeal rather than a civil action within the original jurisdiction of the federal district court. "Cross-system appellate authority is entrusted to this Court . . . but it is outside the domain of the lower federal courts." 522 U.S. at 177 (Ginsburg, J., dissenting) (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)).

Under the Anti-Injunction Act, the federal courts have no authority to enjoin either the Illinois Appellate Court from deciding the appeal or the parties from litigating the appeal in state court. *See Atlantic Coast Line*, 398 U.S. at 287; *County of Imperial v. Munoz*, 449 U.S. 54, 58 (1980). As this Court has explained, "a federal court does not have inherent power to ignore the limitations of § 2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear." *Atlantic Coast Line*, 398 U.S. at 294. The relief Ameritech sought—"a declaration that the [state commission's] Order is invalid and . . . an injunction against enforcement of the Order," J.A. 141a-142a (¶¶ 51, 56)—would require a federal court to do exactly that—enjoin further proceedings in the state courts. *See Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 136 (1941) (Section 2283 applies to "all steps taken in or which may be taken in the state court or by its officers from the institution to the close of the final process. It applies to appellate as well as to original proceedings . . . .").[14]

[14] Even when a party invokes 42 U.S.C. § 1983—one of the few "expressly authorized" exceptions to § 2283—the Court has frequently instructed the lower federal courts to refrain from exercising their equitable powers to enjoin pending state proceedings if those proceedings provide an adequate opportunity to raise a federal claim. *See Ohio Civ. Rights Comm'n*, 477 U.S. at 625-29; *Middlesex County Ethics Committee*, 457 U.S. at 431-37; *Younger*, 401 U.S. at 43-49. While the Court has not resolved the issue of whether *Younger* and its progeny require a losing party in a state administrative adjudication to exhaust appellate remedies, in the context of a civil action the Court has held "'that a party [wishing to contest in federal court the judgment of a state judicial tribunal] must exhaust his state appellate remedies before seeking relief in the District Court.' " *New Orleans Pub. Serv., Inc. v. New Orleans*, 491 U.S. 350, 369 (1989) (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975)). Respect for the authority of state institutions and processes requires the same result when a party seeks to overturn a state agency's adjudication by a suit for injunctive relief in federal district court.

As the court of appeals candidly observed, its proposed system of federal district court review of state commission interpretations "may not have much to recommend it." Pet. App. 5a. That, coupled with the absence of any statutory support for it, is ample reason to reject it.

The damage to Illinois' dignitary interests caused by federal court intervention in this case is not minimized because the federal district court was determining whether the State's officials had violated federal law. That argument was raised and rejected in *Younger*, *see* 401 U.S. at 39-40; *Middlesex County Ethics Committee*, *see* 457 U.S. at 429; and *Ohio Civil Rights Comm'n*, *see* 477 U.S. at 625. The federal law applicable to interconnection agreements may be complex, but that does not give Congress the right to choose which institutions of state government are to enforce the act. *See, e.g., FERC*, 456 U.S. at 774 (Powell, J., concurring in part and dissenting in part) (quoting Henry Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954) ("'The general rule, bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them.' I believe the same principle must apply to other organs of state government."). *See also Coeur d'Alene Tribe*, 521 U.S. at 276 (Kennedy, J.) ("It is a principal concern of the court system in any State to define and maintain a proper balance between the State's courts on one hand, and its officials and administrative agencies on the other.").

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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